defendants or to carry on the operation in breach of the condition of his licence.

However, it was established by evidence that the plaintiff had carried on operation under the licence in compliance with the condition as to the minimum number of labourers to be engaged. The assistant district forest officer (D.W.1) giving evidence on the basis of the records kept in his department deposed that from time to time the plaintiff had sent in returns shewing the names, race and the number of labourers employed by him in the aforesaid operation and the returns had been checked on the field by the department's foresters and found correct. The witness also tendered in evidence two returns submitted by the plaintiff and were exhibited as D.2 and D.3. These returns shew that the plaintiff had from 15 to 17 labourers working for him at a time during the currency of the insurance policy.

Now one of the conditions attached to the licence was that except for the lorry driver and the attendant, all the other employees must be Malays or aborigines. According to the assistant district forest officer the plaintiff had at one time been warned by the department for non-compliance with this condition. I mention this fact not because it had any relevance to the issue under consideration but as evidence of the fact that the forest department did carry out investigations from time to time to find out whether the plaintiff complied with the conditions of his licence.

The plaintiff, on the other hand, maintained that at no time had he more than 6 men under his permanent employ but admitted having had in his work roll as many as 23 labourers at a time and living in his kongsi house. However, he averred that except for the 6 permanent employees the rest were casual labourers whom he employed occasionally to mend the road from the kongsi house to the work site and occasionally to act as substitutes whenever any of his permanent employees were on leave. However, he was unable to substantiate by documentary evidence his allegation that his employees, other than the six permanent workers were not permanent because, here again most conveniently I thought, his pay book which he was obliged to keep under the terms of the policy was lost or mislaid.

The plaintiff called two witnesses besides himself to prove by oral evidence that he had only 6 men in his permanent employ. One of them was P.W.4, the brother of the deceased workman. Obviously, he was an interested party and I did not attach much weight to his evidence. The other witness called was P.W.3, the kapala or the foreman of the work gang. He was paid a monthly salary of $200 a month and was a manual worker. He was undoubtedly a workman within the meaning of section 2 of the Workmen's Compensation Ordinance. In the particulars given in the schedule to the proposal form this witness was not included among the workers mentioned therein as none was referred to as earning an annual income of $2,400. Now according to this witness the plaintiff employed 6 men to work in the forest compartment excluding himself. He deposed that his job consisted of general supervision of the work including the transport of the timber and that he also worked in mending the road. The evidence of this witness far from proving the plaintiff's case proved the defendants' case of breach of warranty in that according to him seven men were employed on the job.

Counsel for the plaintiff citing a passage from *MacGillivray* on Insurance, Vol. 1 paragraph 944 at page 458, submitted that warranties should be read liberally in favour of the assured and against the insurance company. In the present case the question of construing the warranty does not arise. It is simply a question of deciding whether during the currency of the policy the plaintiff employed 6 or more than 6 workmen on the job.

Where the statements contained in a proposal formed the basis of a contract of insurance, it was held in *Dawson Ltd.* v. *Bonnin* [1] that the truth of the statements in the proposal form was a condition of the liability of the insurer.

The basis of the contract in the present case is that the liability of the defendants is subject to the observance by the plaintiff of the condition that he employed not more than 6 labourers on the tree felling operation.

I have no hesitation in rejecting as untrue the plaintiff's evidence that he employed only 6 workmen on the tree felling operation. I hold that the plaintiff in breach of warranty under the insurance policy but in compliance with the condition of his licence and in accordance with the returns submitted to the forest department had in his employ more than 10 labourers working in the forest compartment.

The plaintiff's claim is therefore dismissed with costs.

Claim dismissed.

Solicitors: *Gibb & Co.; Braddell & Ramani.*

WONG AH SUAN v. CHII POH GET & ANOR.

[A.Cr.J. (Harley J.) November 19, 1965]

[Kuching — Criminal Appeal No. K 17 of 1965]

Landlord and Tenant— Sub-tenants —Information relating to — Failure to furnish statutory declaration required by landlord — Rent Control Ordinance (Sarawak Cap. 86), s. 17(2) — Reasonable excuse — Mens rea — Person relying on advice of solicitor.

The appellant who was the landlord of certain premises had sent a notice to the tenants to furnish a statutory declaration. The tenants consulted an advocate who advised that certain particulars should be sent, but that it was not incumbent on them to send a statutory declaration. The landlord thereupon prosecuted the tenants for not sending the statutory declaration. The learned magistrate held that as the accused had acted in ignorance of the law and had consulted a lawyer, they had reasonable excuse for not sending the statutory declaration.

Held: the learned magistrate was wrong in holding that acting on the wrong advice of counsel amounted to a reasonable excuse and he should have convicted the accused person.

Cases referred to:—

(1) *Sherras* v. *De Rutzen* [1895] 1 Q.B. 918 at p. 922.

(2) *Cooper* v. *Simmons* (1862), 31 L.J.M.C. 138.

CRIMINAL APPEAL.

S. K. Reddi for the appellant.

Respondents in person.

Cur. Adv. Vult.

Harley J.: The appellant is a landlord and the two respondents are his tenants. The landlord, in accordance with section 17 of the Rent Control Ordinance, by written notice required the tenants to furnish a statutory declaration. The tenants consulted an advocate who advised that certain particulars should be sent, but that it was not incumbent as yet on the tenants to send a statutory declaration. Only a letter with particulars was sent. On receipt of the letter, the landlord might well have repeated his request for the declaration, in which case no doubt it would have been sent, but instead he chose to prosecute the tenants for not sending the declaration within the statutory 14 days, contra section 17(2) of the Ordinance. If a landlord succeeds in convicting a tenant on this charge, he (the landlord) can then by section 15(1)(k) use the conviction as a ground for claiming possession against the tenants.

"Reasonable excuse" for not sending the statutory declaration is a defence to the charge contra section 17(2). The learned magistrate who tried the case said in his judgment: "In this case both the accused admitted that they were ignorant of the law. But they did not stop there. They went to see a lawyer and they did exactly what the lawyer had advised them to do. They entrusted the affairs to the lawyer....the lawyer who advised the accused was a well-known advocate of some standing. The advice given was unequivocal. To my mind, what the accused did was what any reasonable person would have done under the circumstances..... It follows, therefore, that the excuse they raised for not furnishing statutory declaration or exhibiting or causing the same to be exhibited was reasonable. For the same reason the accused cannot be found guilty. I, therefore, acquit and discharge the accused No. 1 and 2 of the offence as charged."

The sole ground of appeal against acquittal in this court is that "The learned trial magistrate erred in law in holding that acting on the wrong advice of counsel amounted to a reasonable excuse."

Wright J. in the case of *Sherras* v. *De Rutzen* (1) expressed, as it has often been expressed before and since, the principle that "there must in general be guilty knowledge on the part of the defendant, or of some one whom he has put in his place to act for him, generally, or in the particular matter, in order to constitute an offence." But Wright J. also listed a formidable list of exceptions to this rule: "One of the most remarkable exceptions was in the case of bigamy. It was held by all judges, on the statute 1 Jac. 1, c. 11, that a man was rightly convicted of bigamy who had married after an invalid Scotch divorce, which had been obtained in good faith, and the validity of which he had no reason to doubt."

In contrast to the principle that *mens rea* is an essential ingredient in every offence, is the maxim that every person is presumed to know the law, and hence ignorance or misapprehension of the law affords no defence. *Craies* on Statute Law 6th Edition at page 385 states:

> "In accordance with the principle of law expressed by the legal maxim, *Ignorantia juris neminem excusat*, the moment an Act of Parliament actually comes into operation, strictly speaking every person who is amenable to the law of England is affected by it, even although it may be morally certain that he could not know that the statute in question had been passed. This was laid down by Lord Eldon in *R.* v. *Bailey*, where the prisoner was indicted under an Act of which he could not have known the existence at the time he committed the offence with which he was charged; but Lord Eldon told the jury that he was of opinion that he was, in strict law, guilty under the statute, although he could not have known that it had been passed, and that his ignorance of the fact could in no wise affect the case other than that it might be the means of recommending him for a pardon. This ruling was subsequently upheld by all the judges, and on their recommendation a pardon was granted to the prisoner, on the ground that he could not at the time he committed the offence have known of the existence of the Act of Parliament."

The learned magistrate, who tried this case in the court below, said that he would have paid no regard to the defence if the tenants had said simply: "We are ignorant of the law", or even if they had said: "A friend advised us"; but, as the tenants were in fact guided by *bona fide*, if mistaken, advice given by counsel learned in the law, he accepted the defence of reasonable excuse. We do not know whether the learned magistrate would have accepted as an excuse: "I looked up the law in a text-book and acted in accordance with my understanding of it."

With all respect to the learned magistrate,

once the maxim *ignorantia juris neminem excusat* is established, it is illogical to suppose that second-hand ignorance may excuse. To take an extreme example: suppose a lawyer or a text-book states that a man who kills his wife in the act of adultery is not guilty of murder; and suppose a man in that belief goes out to catch his wife in adultery and kills her. In such a case, if that man is subsequently charged with murder or manslaughter, any misapprehension as to the law which may have existed in his mind will not afford him a defence.

It seems to me that any doubt which might have existed with regard to the instant case is clearly resolved by the decision in *Cooper* v. *Simmons*.[2] That case concerned the liability of an infant apprentice to serve his master's executrix. The apprentice was charged with absenting himself from the service of the executrix "without lawful excuse." He had so absented himself on the advice of his attorney. The justices who first tried the case stated that:

"After a careful consideration of the whole case, we were of opinion that the respondent and her workmen were quite as capable of instructing the appellant as the husband was during his lifetime, and that the appellant had not left his service for want of proper instruction, but with a view only to get better wages elsewhere. We were also of opinion that the appellant is bound to serve the executrix, (the respondent in this case), under the above indenture of apprenticeship, until the expiration of his term, so long as she manages and carries on the business in the manner proved before us. And with respect to the plea that the appellant had been advised by his attorney that the apprenticeship was at an end, supposing such advice to have been given before he absented himself from his services he must abide by the consequences thereof, as we think it would be no excuse for doing an illegal act, and having been advised to do it, thereby oust the jurisdiction of justices to deal with the case in a summary manner; besides which, we see great danger in allowing defences of this description being set up, as advocates, in their zeal to obtain an acquittal of their clients, may be encouraged to advise the committal of an offence which may turn out to be a criminal one."

The justices adjudged the apprentice guilty and sentenced him to 14 days' imprisonment. On appeal, Pollock C.B. said:

"This case comes before us upon an appeal under the recent statute, against a conviction and an award of punishment by two magistrates, in the case of an apprentice misbehaving himself and absenting himself from the service of his alleged master. The magistrate found him guilty of the offence, and awarded imprisonment for fourteen days with hard labour, under the statute, and he has appealed. The facts are very short. The apprentice was bound to the husband of the present respondent, and he was bound to serve the master, and the executors of the master upon the death of the master, provided they carried on the same business. Upon the death of the master the apprentice continue to serve the wife, the executrix of the master for ten months, and was sufficiently instructed the whole time. The business was *bona fide* carried on, and, during the life of the husband, the wife interfered very much in the conduct of it; so that, substantially, there appears to have been no ground of complaint. Whatever objection he made, or can be raised upon this argument, is purely of a technical nature. At the end of ten months the apprentice went away, and obtained higher wages. I think one ought to attach no importance to that, because, in all probability, the wages he would have under the indenture would be below the value of his services at that period of the apprenticeship. He is then charged with absenting himself; and I must, I think, assume that before the magistrates he said he was advised by his attorney that the indenture was not binding upon him, and that he was at liberty to leave. The magistrates have dealt with that subject in a way which, I agree with Mr. Gray, calls on us to decide upon the point. Now, the first question is, is the indenture binding? It appears to me that it is. The case where the executors were left out of the indenture apparently justifies the inference, that if they had been put in, the decision would have been different, and the court would have held the indenture binding. If the indenture had been held binding, the next question is, is the advice of the attorney any answer to the complaint? There were several cases put by Mr. Gray in the course of the argument, in which it may be that a mistake in point of fact would be an answer to a complaint: but a mistake in point of law is of a very different kind. Every man is bound to know the law; and the advice of the attorney appears to me to amount to nothing more than this: that it cannot put the apprentice in a better condition than if he had himself really *bona fide* believed, from having read in a book or having thought about it, that he was entitled to be absent. I do not think that it can be put higher than that. Supposing he did think it so, is that any answer to the complaint for misconduct? I think it would be a dangerous doctrine, if we were to substitute the opinion of any person charged with a breach of the law, instead of the law itself. I think that all we have to inquire in reviewing this decision of the magistrate is, was the apprentice justified in doing what he did? If the indenture was in force, he was not justified. I will assume, for the moment, he thought he had a right to do this. That is not the question. The question is, had he in point of law a right to do that? His going away under these circumstances was not a mistake in fact, it was a mistake in law. He, very likely, thought there was no mistake in point of law, but that he could get better wages elsewhere. Looking at the whole case, and taking all the circumstances that belong to it, I own it appears to me the decision of the magistrates was right; and the points of law that have been raised, I think, furnish no answer to the case on the part of the mistress who makes the complaint."

Martin B. and Wilde B. agreed with the judgment of the Lord Chief Baron, and I would cite the following passage from the judgment of Martin B:

"Mr. Gray took a third point and it was this: upon the finding of these justices, it is possible they may have been of opinion that this young man, having conceived that he was not bound by this deed to serve the widow, went to a legal adviser, an attorney, at Wolverhampton, and was advised by him that his view was correct, and thereupon he, *bona fide*, and believing that to be sound and good advice withdrew himself from the service; and the question is, whether that is any answer to these proceedings before the justices. Now, Mr. Gray treats this as entirely a criminal proceeding. I doubt very much whether that is its true character. It seems to me nothing more than a provision by the legislature for the purpose of enforcing certain civil rights. The legislature may have reasonably taken into consideration instances of persons against whom it would be idle to bring an action. The legislature may very truly and reasonably have said this is entirely a civil case; but it is not a contract to be enforced in the ordinary way

by a civil action, we therefore will take a more summary mode of doing it, and will treat this civil contract as a matter punishable, not strictly criminally, but as a way of enforcing the performance of the contract. I do not think it is reasonable to consider it as if you were treating the matter as a crime, or a criminal offence. I do not think this young man will consider himself a bit the worse after fourteen days in prison as there is no imputation upon his honesty or his morals, and possibly it is the only mode by which this civil contract can be carried out. The question is, is it any answer to his wilfully and deliberately acting contrary to that which the law by his own contract imposed on him, that he was advised by a person to do so and so? It seems to me that would be contrary to good sense. If a person wilfully, knowingly and designedly does that which was done in this case, he must take the consequences; and one consequence is, that by act of parliament justices have jurisdiction to punish him in a sense, that is in the sense, it seems to me, to compel him to perform his contract. I do not think, however right the decisions may be that have been mentioned to us, that they extend to this case. This young man has broken his contract, and the consequence is, the justices had jurisdiction to do what they did."

In my view of the instant case the learned magistrate was bound to find the tenant respondents guilty and I therefore allow this appeal, adjudge the respondents guilty of the offence charged, and set aside the order of acquittal. In view, however, of the extenuating circumstances under which the offence was committed, I direct in accordance with section 242(1) of the Criminal Procedure Code that the respondents be released after due admonition (and the only admonition due would seem to be advice not to trust lawyers). Section 245 of the Criminal Procedure Code prevents this order from being used by the landlord appellant as a conviction for the purposes of section 15(1)(k) of the Rent Control Ordinance. The result is that nobody will leave this court happy but that justice, as I hope, will have been done.

Appeal allowed.

PUBLIC PROSECUTOR v. SIEW SUNG

[R.Cr.J. (Ong Hock Thye Ag.C.J.) October 18, 1965]

[K.L. — Criminal Revision No. 25 of 1965]

Lotteries — Operating pin-table without permit — Hearsay evidence — Statement to police officer in course of investigation — Criminal Procedure Code (Cap. 6), s. 113 — Lotteries Ordinance, 1952, s. 10(1).

The accused was convicted of promoting a lottery by operating a pin-table without a permit. The police found the pin-table in a shop. The police inspector's evidence was that his inquiries led him to believe that the accused was the owner of the machine but no evidence was called to show who was the owner of the pin-table. A police sergeant also gave evidence that the accused came to the police station and opened the machine, revealing a collection of $6 in ten cent coins.

Held: the evidence of the police inspector was inadmissible being hearsay and the evidence of the police sergeant was inadmissible having regard to section 113 of the Criminal Procedure Code. Therefore there was no evidence in this case to show that the accused had anything to do with the pin-table and his conviction must therefore be quashed.

Cases referred to:—

(1) *Lee Lian* v. *Public Prosecutor* [1956] M.L.J. 191.

(2) *Nagalingam* v. *Public Prosecutor* [1957] M.L.J. 196.

(3) *Meelamchan* v. *Public Prosecutor* [1962] M.L.J. 213.

CRIMINAL REVISION.

Ong Hock Thye Ag.C.J.: On October 8, 1965 the accused was convicted in the magistrate's court at Kuala Lumpur, under section 10(1) of the Lotteries Ordinance, 1952, of promoting a lottery, to wit, operating a pin-table without being in possession of a valid permit in that behalf, and was fined the sum of $300, in default 3 weeks' imprisonment. The case came to my notice quite fortuitously and I called for the record under my powers of revision.

The evidence for the prosecution may be summarised in a few words. At about 3.40 p.m. on May 12, 1965 Inspector Lee Woh Onn led a police party into a shop, found a pin-table machine against a wall, tested it by inserting a ten-cent coin, found it in working order and thereupon arrested the accused who was seated a few feet away from the machine.

Sergeant Babjee, who accompanied the inspector, alleged that the accused was the occupier of the premises. The inspector's evidence that his enquiries led him to believe that the accused was owner of the machine, was rightly struck out as hearsay, upon objection raised by defence counsel. Neither of these witnesses told the court whether or not they had any search warrant under section 11 of the Ordinance. Presumably, they entered because the shop, as such, was open to the public. On cross-examination, however, the inspector admitted that he had not ascertained who the shop proprietor was. This, of course showed that the linch-pin of the prosecution case was missing. Defence counsel accordingly submitted that the prosecution had failed to make out a *prima facie* case, as required by section 173(f) of the Criminal Procedure Code. The accused elected to say nothing upon the defence being called and was thereupon convicted and sentenced as aforesaid.

The conviction clearly was wrong. There was no evidence that the accused was either the proprietor or, in some other manner, the occupier of the premises. What the sergeant said was plainly inadmissible as hearsay. The further evidence given by the sergeant that, two days after the raid on the premises, the accused came to the police station and opened the machine, revealing a total collection of $6 in 10 cent coins, was again inadmissible, having regard to section